



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No. 23721
For: Violation of Section 3(e)
of R.A. No. 3019, as amended

- versus -

ALFREDO MACAPUGAY, *et al.*,
Accused.

Present:
Lagos, J., *Chairperson,*
Mendoza - Arcega and
Corpus - Mañalac, JJ.

Promulgated:

July 02, 2018 *Jcl*

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RESOLUTION

CORPUS - MAÑALAC, J.:

This resolves the prosecution's *Omnibus Motion [Re: To Revive the Instant Case and to Set for Hearing with Request for Issuance of Subpoena]* filed on June 1, 2018 and accused Renato Diaz's *Comment/Opposition* thereto filed on June 20, 2018.

The Antecedents

The Information alleges a violation of Republic Act No. 3019, Section 3 (e) by accused - Alfredo Macapugay, Oligario Tabernilla, Benjamin Malinao, Donato Rivera, Jr., Edgardo Reyes, Francisco Itliong, Godofredo Angara, Jr., Petronilo De Llamas, Jose Enriquez, Renato Diaz, Rogelio Cantos, Rolando Mamaid, Feliciano Sagana, Alfredo Zamora, Jr., all public officers and employees of the Office of the Quezon City Engineer/Building Official, in conspiracy with Hermilo Ocampo, Racquel Ocampo, Rosita Ku, Sonny Ku, Alfredo Chua, and Ramon Ng, all stockholders/directors of *Westwood Entertainment Company, Incorporated*. Allegedly, thru evident bad faith and manifest partiality, the accused caused undue injury to public service and at the same time gave unwarranted benefit and preference to *Westwood* establishment, by granting the latter two (2) building permits for renovation and only one (1) Certificate of Occupancy, without the said accused public officers conducting any inspection of *Westwood* establishment known as the *Ozone Dance Club* as demanded by circumstances, thus failing to detect the structural deficiencies, as well as electrical and fire safety insufficiencies, which directly caused the fire that raised

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Ozone Dance Club on March 19, 1996 resulting to the death of at least 162 and serious physical injuries to 93 persons.

The Demurrer to Evidence filed by accused Tabernilla, Angara Jr., and Zamora Jr. was granted in a Resolution dated May 29, 2003, thus, the case against them was dismissed. The subsequent deaths of accused Malinao, Enriquez and Cantos also led to the dismissal of the case against them. In the *Decision* promulgated on November 20, 2014, accused Macapugay, Rivera, Jr., Reyes, Itliong, Sagana, De Llamas and Mamaid, as well as accused Hermilo Ocampo and Ramon Ng were found guilty beyond reasonable doubt. On the other hand, accused Racquel Ocampo, Rosita Ku, Sunny Ku and Alfredo Chua were acquitted of the offense charged.

Pending the apprehension of accused **Diaz**, the records were sent to the Archives. Upon his arrest on October 26, 2015 and consequent arraignment on November 4, 2015, trial against him ensued. However, for failure of the prosecution to present its intended witnesses who could no longer be located, the case against accused Diaz was **provisionally dismissed** with his consent in the Order dated August 2, 2016.

From the said dismissal of the case against Diaz, almost two (2) years had lapsed when the prosecution filed the instant motion praying for the revival of the case against him.

The Motion

The prosecution alleges that upon perusal of the records, it discovered that *Godofredo Angara, Jr.* who was the Building Inspector of the Office of the City Engineer of Quezon City since 1981 [former accused who was acquitted] may be able to shed light as to the culpability of accused Diaz. The latter allegedly was a subordinate of Angara, Jr. who can testify that it was Diaz who conducted the inspection of the premises of Ozone Disco on September 25, 1995 and issued the corresponding Notice of Payment. That Angara, Jr. relied on the findings of Diaz that Ozone Disco complied with the requirements of the Building Code. Thus, it prays that this case be revived and set for hearing to present Angara, Jr. as witness against accused Diaz.

The Comment/Opposition

Diaz opposes the revival of the case, alleging that Angara, Jr., was already available even prior to the arraignment of Diaz, but he was not subpoenaed nor listed by the prosecution as one of its witnesses.

He further alleges that Angara, Jr. was a co-accused for conspiracy. He invokes Rule 130, Section 30 of the Rules of Court on "Admission by conspirator", alleging that before the act or declaration of Angara, Jr. relating to conspiracy and during its existence may be given in evidence against Diaz, conspiracy must be proven by evidence other than such act or declaration.

Considering that conspiracy was not shown through other acts or declarations, Angara Jr.'s testimony against him is said to be inadmissible.

Diaz also claims that granting the motion filed after almost two (2) years would violate his right to speedy trial particularly so as the failure to present the prosecution witnesses was due to the prosecution's lack of due diligence in ascertaining the relevance of Angara, Jr.'s testimony in proving the guilt of Diaz.

The Court's Ruling

Section 8, Rule 117 of the Rules of Court provides:

SEC.8. *Provisional dismissal.* A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived. [emphasis supplied]

The foregoing rule applies to Diaz who *agreed* to a provisional dismissal of his case, which means that the dismissal is of a temporary character as the case may be reinstated to the Court's active docket should the prosecution be able to produce its witnesses. In the case of *Los Baos vs. Pedro*, the Supreme Court discussed the nature of a "provisional dismissal," viz:

A first notable feature of Section 8, Rule 117 is that it does not exactly state what a provisional dismissal is. The modifier *provisional* directly suggests that the dismissals which Section 8 essentially refers to are those that are temporary in character (*i.e.*, to dismissals that are without prejudice to the re-filing of the case), and not the dismissals that are permanent (*i.e.*, those that bar the re-filing of the case). Based on the law, rules, and jurisprudence, permanent dismissals are those barred by the principle of double jeopardy, by the previous extinction of criminal liability, by the rule on speedy trial, and the dismissals after plea without the express consent of the accused. Section 8, by its own terms, cannot cover these dismissals because they are not provisional.

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xxx a *provisional* dismissal is, by its own terms, *impermanent* until the time-bar applies, at which time it becomes a permanent dismissal.

Given that the motion to reinstate the case against Diaz was filed within the period of two (2) years from the issuance of the *Order* dated August 2, 2016 provisionally dismissing the case, the revival of the instant case is not time-barred.

Accused Diaz argues that the reinstatement of the case after almost two (2) years from its dismissal is violative of his right to speedy trial. The argument lacks merit, considering that he expressly signified his conformity to a conditional dismissal when he could have simply invoked his right to speedy trial at the time when the prosecution failed to produce and present its witnesses. Moreover, the two-year limitation period is precisely provided under the Rules as a safeguard against prolonged anxiety that may be caused to the accused arising from indefinite provisional dismissal. Reviving the case before the expiration of the said period, thus, is within legal bounds. As held by the Supreme Court in *People vs. Lacson*,¹

On the other side of the fulcrum, a mere provisional dismissal of a criminal case does not terminate a criminal case. The possibility that the case may be revived at any time may disrupt or reduce, if not derail, the chances of the accused for employment, curtail his association, subject him to public obloquy and create anxiety in him and his family. He is unable to lead a normal life because of community suspicion and his own anxiety. He continues to suffer those penalties and disabilities incompatible with the presumption of innocence. He may also lose his witnesses or their memories may fade with the passage of time. In the long run, it may diminish his capacity to defend himself and thus eschew the fairness of the entire criminal justice system.

The time-bar under the new rule was fixed by the Court to excise the malaise that plagued the administration of the criminal justice system for the *benefit of the State and the accused*; not for the accused only.

Diaz avers that the intended witness, Angara, Jr. is not one of the listed witnesses for the prosecution. However, the Court obliges to allow his presentation considering that trial as against Diaz has yet to commence. A.M. No. 03-1-09-SC, Part I-B92) thereof requires that:

“No evidence shall be allowed to be presented and offered during the trial in support of a party’s evidence in chief other than those that had earlier been identified and pre-marked during the pre-trial, except if allowed by the court for a good cause shown.”

The record shows that none of the intended witnesses against Diaz- *Engr. Agustin Torres, Engr. Nelson Se, and Mr. Dante Navea*- had been put to the stand. It is regrettable that although Torres and Navea had earlier testified as against the other accused, they could no longer be located and re-called as witness against Diaz who was belatedly arrested. The interest of justice requires that the

¹ G.R. No. 149453, April 1, 2003

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presentation of Angara, Jr. as additional witness be allowed, more so since the *Pre-Trial Order* dated February 2, 1999 listed as prosecution witnesses, "Mr. Dante Navea and four (4) other witnesses." Angara, Jr. may fit in as one of those reserved witnesses.

Misplaced is the argument that as a conspirator, Angara, Jr.'s testimony against Diaz would be inadmissible there being no prior independent proof of conspiracy. Angara, Jr. does not appear to be a conspirator, or that he would be testifying on conspiracy, considering that the case against him was already dismissed upon his demurrer to evidence. Angara, Jr. would rather be testifying on the fact that Diaz conducted inspection of *Ozone Disco* who found that it complied with the requirements of the Building Code. Without pre-empting the determination of the admissibility or probative value of the said testimony in proving the guilt of Diaz, the Court finds no impediment in reinstating the case against him.

WHEREFORE, the prosecution's Omnibus Motion is GRANTED. The case is withdrawn from the Archives and REINSTATED to the Court's active docket.

As prayed for, let subpoena be issued to Mr. Godofredo Angara, Jr. at No. 16-B Mapagmahal Street, Barangay Piñahan, Quezon City to testify and to bring with him on the hearing set, the following documents:

1. Annual Building Inspection Notice dated September 18, 1995 (pre-marked as Exhibit "3" for Angara);
2. Notice of payment dated September 25, 1995 (pre-marked as Exhibit "4" for Angara); and
3. Letter dated March 29, 1995 from Renato Diaz to Mayor Ishmael Mathay (pre-marked as Exhibit "5" for Angara).

SO ORDERED.


MARYANN E. CORPUS – MAÑALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA – ARCEGA
Associate Justice